

# PUBLIC UTILITIES

## CHAPTER 340

### HOUSE BILL NO. 1060

(Energy and Natural Resources Committee)  
(At the request of the Public Service Commission)

AN ACT to amend and reenact section 49-02-08 of the North Dakota Century Code, relating to the manner in which public utility meters may be tested.

#### **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 49-02-08 of the North Dakota Century Code is amended and reenacted as follows:

#### **49-02-08. Testing meters - Gas - Electric.**

The commission shall ~~make tests~~test, from time to time, or request a public utility to test, or use a third party to test meters of public utilities used:

1. To measure the amount of electric current passing through such meters to consumers.
2. To measure the amount of gas passing through such meters for the use of its customers.
3. To determine the British thermal unit content of natural or artificial gas distributed by public utilities in this state.

Approved March 9, 2021

Filed March 10, 2021

## CHAPTER 341

### SENATE BILL NO. 2091

(Energy and Natural Resources Committee)  
(At the request of the Public Service Commission)

AN ACT to amend and reenact section 49-03-01.5 of the North Dakota Century Code, relating to an exclusion from the definition of public utility and rural electric cooperative.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 49-03-01.5 of the North Dakota Century Code is amended and reenacted as follows:

##### **49-03-01.5. Definitions.**

As used in sections 49-03-01 through 49-03-01.5:

1. "Electric provider" means either an electric public utility or a rural electric cooperative.
2. "Electric public utility" means a privately owned supplier of electricity offering to supply or supplying electricity to the general public. The term does not include a person that uses an electric vehicle charging station to resell electricity to the public if the reseller has procured electricity from an electric service provider that is authorized to engage in the retail sale of electricity within the service area in which the electric vehicle charging service is provided, and the resale is for the charging of electric vehicles exclusively.
3. "Electric transmission line" means facilities for conducting electric energy at a design voltage of one hundred fifteen kilovolts or greater phase to phase and more than one mile [1.61 kilometers] long.
4. "Electric transmission provider" means an owner or operator, other than a rural electric cooperative, of a transmission line the costs of which are recovered directly or indirectly through transmission charges to an electric public utility.
5. "Person" includes an individual, an electric public utility, a corporation, a limited liability company, an association, or a rural electric cooperative.
6. "Rural electric cooperative" includes any electric cooperative organized under chapter 10-13. An electric cooperative, composed of members as prescribed by law, shall not be deemed to be an electric public utility. The term does not include a person that uses an electric vehicle charging station to resell electricity to the public if the reseller has procured electricity from an electric service provider that is authorized to engage in the retail sale of electricity within the service area in which the electric vehicle charging service is provided, and the resale is for the charging of electric vehicles exclusively.

7. "Service area" means a defined geographic area containing existing or future service locations established by an agreement among electric providers and approved by the commission.
8. "Service area agreement" means an agreement between electric providers establishing service areas and designating service locations to be served by each provider under section 49-03-06.
9. "Service location" means the structures, facilities, or improvements on a parcel of real property to which electric service may be provided.

Approved March 31, 2021

Filed April 1, 2021

## CHAPTER 342

### HOUSE BILL NO. 1067

(Energy and Natural Resources Committee)  
(At the request of the Public Service Commission)

AN ACT to create and enact section 49-05-04.4 of the North Dakota Century Code, relating to the authority of the public service commission to adopt rules and request a fee to cover the cost of investigating a public utilities integrated resource plan.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Section 49-05-04.4 of the North Dakota Century Code is created and enacted as follows:

#### **49-05-04.4. Integrated resource plan.**

An electric public utility shall submit integrated resource plans to the commission. The commission may adopt rules and regulations for preparation and submission of integrated resource plans. At the request of the commission, the applicant shall pay a fee reasonably necessary for completing an investigation of the integrated resource plan up to an amount not exceeding two hundred fifty thousand dollars. If additional funds are reasonably necessary to pay the costs of an investigation of the integrated resource plan, upon request of the commission and with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of an investigation by the commission.

Approved April 19, 2021

Filed April 20, 2021

## CHAPTER 343

### SENATE BILL NO. 2313

(Senator Wardner)  
(Representative Pollert)

AN ACT to create and enact three new sections to chapter 49-05 of the North Dakota Century Code, relating to resource planning, planning reserve margin, and reliable service obligation; to amend and reenact sections 17-05-05 and 17-05-13 of the North Dakota Century Code, relating to the powers of the transmission authority and the transmission authority's reporting requirements; and to provide a penalty.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 17-05-05 of the North Dakota Century Code is amended and reenacted as follows:

##### **17-05-05. Powers.**

The authority has all powers necessary to carry out the purposes of this chapter, including the power to:

1. Make grants or loans and to provide other forms of financial assistance as necessary or appropriate for the purposes of this chapter;
2. Make and execute contracts and all other instruments necessary or convenient for the performance of its powers and functions under this chapter;
3. Borrow money and issue evidences of indebtedness as provided in this chapter;
4. Receive and accept aid, grants, or contributions of money or other things of value from any source, including aid, grants, or contributions from any department, agency, or instrumentality of the United States, subject to the conditions upon which the aid, grants, or contributions are made and consistent with the provisions of this chapter;
5. Issue and sell evidences of indebtedness in an amount or amounts as the authority may determine, but not to exceed eight hundred million dollars, plus costs of issuance, credit enhancement, and any reserve funds required by agreements with or for the benefit of holders of the evidences of indebtedness for the purposes for which the authority is created under this chapter, provided that the amount of any refinancing shall not be counted toward such eight hundred million dollar limitation to the extent it does not exceed the outstanding amount of the obligations being refinanced;
6. Refund and refinance its evidences of indebtedness;
7. Make and execute interest rate exchange contracts;
8. Enter lease-sale contracts;

9. Pledge any and all revenues derived by the authority under this chapter or from a transmission facility, service, or activity funded under this chapter to secure payment or redemption of the evidences of indebtedness;
10. To the extent and for the period of time necessary for the accomplishment of the purposes for which the authority was created, plan, finance, develop, acquire, own in whole or in part, lease, rent, and dispose of transmission facilities;
11. Enter contracts to construct, maintain, and operate transmission facilities;
12. Consult with the public service commission, regional organizations, and any other relevant state or federal authority or persons as necessary and establish reasonable fees, rates, tariffs, or other charges for transmission facilities and all services rendered by the authority;
13. Lease, rent, and dispose of transmission facilities owned pursuant to this chapter;
14. Investigate, plan, prioritize, and propose corridors of the transmission of electricity;
15. Participate in and join regional transmission organizations; and
16. Participate in studies of transmission options for the purpose of identifying opportunities for private transmission investment or private public investment options in transmission which will increase opportunity for export from the state consistent with maintaining a stable grid for the load serving entities in North Dakota; and
17. Do any and all things necessary or expedient for the purposes of the authority provided in this chapter.

**SECTION 2. AMENDMENT.** Section 17-05-13 of the North Dakota Century Code is amended and reenacted as follows:

**17-05-13. Reporting requirements.**

1. The authority shall deliver a written report on its activities to the legislative council each biennium. Notwithstanding chapter 54-60.1, the authority shall provide an annual report to the industrial commission detailing activities and expenditures incurred during the preceding year.
2. The authority shall deliver a written report on the status of the resilience of the electric grid to the legislative council and the industrial commission by September 1, 2022, and annually thereafter. The report must be forwarded by the industrial commission to the regional transmission operators in the state.
  - a. The information for the report should be collected from publicly available information to the extent possible. If public information is unavailable, the authority shall request a generation facility and a transmission owner to provide the information needed to complete the report.
  - b. The report may be a short-term and long-term projection of the following:

- (1) The adequacy of the state's electric grid to meet the demands of load within the state and to continue to export electricity from the state;
- (2) The resilience of the state's electric grid, including local resilience; and
- (3) The plans of generation owners, developers, or operators to add or remove generation assets connected to an independent system or regional transmission operator in excess of an aggregate of twenty-five megawatts.

**SECTION 3.** A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

**Resource planning.**

1. An integrated resource plan must include:
  - a. The electric public utility's forecast of demand for electric generation supply over the planning period with recommended plans for meeting the forecasted demand plus an additional planning reserve margin for ensuring adequate and sufficient reliability of service; and
  - b. Any additional information the commission requests related to how an electric public utility intends to provide sufficient electric generation service for use by retail customers within the state over the planning period.
2. An electric public utility shall include a least cost plan for providing adequate and reliable service to retail customers which is consistent with the provisions of this title and the rules and orders adopted and issued by the commission.
3. The commission may consider the qualitative benefits and provide value to a base-load generation and load-following generation resource and its proximity to load.
4. The commission may contract or consult with an expert to evaluate qualitative benefits of resources and to review reliability planning. The commission may require an electric public utility to pay a fee necessary for completion of an evaluation in an amount not to exceed two hundred fifty thousand dollars.
  - a. If additional funds are necessary for completion of the evaluation, upon approval of the emergency commission, the electric public utility shall pay the additional fees reasonably necessary for the completion.
  - b. If the evaluation applies to more than one electric public utility, the commission may assess each electric public utility the proportionate share of the fee.
5. An electric public utility shall report annually to the commission on cybersecurity preparedness, including an assessment of emerging threats and efforts taken by the electric public utility to implement cybersecurity measures. The commission may limit access to records and portions of a meeting relating to cybersecurity preparedness.

**SECTION 4.** A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

**Planning reserve margin - Penalty.**

The commission may require action, assess a disallowance or fine, or provide a penalty in accordance with chapter 49-07 if an electric public utility fails to meet the minimum capacity requirement and reserve margin. Unless otherwise set by the commission, the minimum capacity requirement and planning reserve margin is as set by the regional transmission organization to which the electric public utility belongs.

**SECTION 5.** A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

**Reliable service obligation.**

An electric public utility is responsible for ensuring reliable service. If an electric public utility fails to meet its obligation to provide reliable service to customers within the state, the commission may require action, assess disallowances or fines, or provide a penalty. The commission shall adopt rules and establish guidelines for assessment of penalties, fines, or disallowances which must take into consideration the nature, circumstances, and gravity of the violation, degree of culpability, history of prior outages, and good-faith attempts to ensure reliability.

Approved April 19, 2021

Filed April 20, 2021

## CHAPTER 344

### SENATE BILL NO. 2206

(Senator Bell)

AN ACT to amend and reenact section 49-06-02 of the North Dakota Century Code, relating to value of property for ratemaking purposes.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 49-06-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **49-06-02. Value of property for ratemaking purposes - Determination.**

The value of the property of a public utility, as determined by the commission for ratemaking purposes, is the money honestly and prudently invested therein by the utility including construction work in progress for new facilities that use lignite mined in this state to generate electricity, as well as additions or modifications to existing lignite facilities, less accrued depreciation. The commission shall allow a public utility for those new or existing facilities utilizing lignite mined in this state as its primary fuel:

1. To recover its research and development costs incurred to develop lignite more cleanly, efficiently, or economically, including carbon dioxide capture and sequestration utilization and a reasonable rate of return on capital expenditures;
2. To recover its incremental costs of complying with federal environmental laws, including a reasonable rate of return on capital expenditures. The commission may allow these costs to be recovered by an environmental surcharge that may be added to existing rates; ~~and~~
3. To recover all costs resulting from a coal severance tax pursuant to chapter 57-61 and all costs resulting from a coal conversion tax pursuant to chapter 57-60. The commission shall allow the inclusion of these costs in the base rates and the inclusion in the automatic adjustment clause of any of these costs not in base rates; and
4. To recover costs in rates, including a financial incentive set at a reasonable rate for power purchase agreements of a dispatchable on-demand generating unit, plant, or facility deemed to protect grid reliability.

Approved April 12, 2021

Filed April 13, 2021

**CHAPTER 345****HOUSE BILL NO. 1308**

(Representative Devlin)

AN ACT to repeal section 49-09-14 of the North Dakota Century Code, relating to filings of utility property transfers; and to provide for a relocation of utility property transfer files.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. REPEAL.** Section 49-09-14 of the North Dakota Century Code is repealed.

**SECTION 2. RECORDS TRANSFER.** The secretary of state may relocate any utility property transfer files submitted under section 49-09-14 of the North Dakota Century Code to the state archives. After relocation to the state archives, the files will continue to have the same effect as when the files were located in the secretary of state's office.

Approved March 25, 2021

Filed March 26, 2021

## CHAPTER 346

### HOUSE BILL NO. 1095

(Energy and Natural Resources Committee)  
(At the request of the Public Service Commission)

AN ACT to create and enact a new subsection to section 49-22-07 of the North Dakota Century Code, relating to the siting of a repowered wind conversion facility that has not previously been issued a certificate of site compatibility; and to amend and reenact sections 49-22-03 and 49-22-16.4 of the North Dakota Century Code, relating to the definition of repower for a wind facility and waivers or extensions for light mitigation technology systems.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>209</sup> **SECTION 1. AMENDMENT.** Section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **49-22-03. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Certificate" means the certificate of site compatibility or the certificate of corridor compatibility issued under this chapter.
2. "Commission" means the North Dakota public service commission.
3. "Construction" includes a clearing of land, excavation, or other action affecting the environment of the site after April 9, 1975, but does not include activities:
  - a. Conducted wholly within the geographic location for which a utility has previously obtained a certificate or permit under this chapter, or on which a facility was constructed before April 9, 1975, if:
    - (1) The activities are for the construction of the same type of facility as the existing type of facility as identified in a subdivision of ~~subsections~~subsection 5 or 42in subsection 13 of this section and the activities are:
      - (a) Within the geographic boundaries of a previously issued certificate or permit;
      - (b) For an electric energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
      - (c) For an electric transmission facility constructed before April 9, 1975, within a width of three hundred fifty feet [106.68 meters] on either side of the centerline;

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<sup>209</sup> Section 49-22-03 was also amended by section 1 of House Bill No. 1096, chapter 347.

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- (2) Except as provided in subdivision b, the activities do not affect any known exclusion or avoidance area;
  - (3) The activities are for the construction:
    - (a) Of a new electric energy conversion facility;
    - (b) Of a new electric transmission facility;
    - (c) To improve the existing electric energy conversion facility or electric transmission facility; or
    - (d) To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
  - (4) Before conducting any activities, the utility certifies in writing to the commission that:
    - (a) The activities will not affect a known exclusion or avoidance area;
    - (b) The activities are for the construction:
      - [1] Of a new electric energy conversion facility;
      - [2] Of a new electric transmission facility;
      - [3] To improve the existing electric energy conversion or electric transmission facility; or
      - [4] To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
    - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility.
- b. Otherwise qualifying for exclusion under subdivision a, except that the activities are expected to affect a known avoidance area and the utility before conducting any activities:
- (1) Certifies in writing to the commission that:
    - (a) The activities will not affect a known exclusion area;
    - (b) The activities are for the construction:
      - [1] Of a new electric energy conversion facility;
      - [2] Of a new electric transmission facility;
      - [3] To improve the existing electric energy conversion facility or electric transmission facility; or
      - [4] To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and

- (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility;
  - (2) Notifies the commission in writing that the activities are expected to impact an avoidance area and provides information on the specific avoidance area expected to be impacted and the reasons why impact cannot be avoided; and
  - (3) Receives the commission's written approval for the impact to the avoidance area, based on a determination that there is no reasonable alternative to the expected impact. If the commission does not approve impacting the avoidance area, the utility must obtain siting authority under this chapter for the affected portion of the site or route. If the commission fails to act on the notification required by this subdivision within thirty days of the utility's filing the notification, the impact to the avoidance area is deemed approved.
- c. Incident to preliminary engineering or environmental studies.
4. "Corridor" means the area of land where a designated route may be established for an electric transmission facility.
5. "Electric energy conversion facility" means a plant, addition, or combination of plant and addition, designed for or capable of:
  - a. Generation by wind energy conversion exceeding one-half megawatt of electricity; or
  - b. Generation by any means other than wind energy conversion exceeding fifty megawatts of electricity.
6. "Electric transmission facility" means an electric transmission line and associated facilities with a design in excess of one hundred fifteen kilovolts. "Electric transmission facility" does not include:
  - a. A temporary electric transmission line loop that is:
    - (1) Connected and adjacent to an existing electric transmission facility that was sited under this chapter;
    - (2) Within the corridor of the sited facility and does not cross known exclusion or avoidance areas; and
    - (3) In place for less than one year; or
  - b. An electric transmission line that is less than one mile [1.61 kilometers] long.
7. "Facility" means an electric energy conversion facility, electric transmission facility, or both.
8. "Permit" means the permit for the construction of an electric transmission facility within a designated corridor issued under this chapter.

9. "Person" includes an individual, firm, association, partnership, cooperative, corporation, limited liability company, or any department, agency, or instrumentality of a state or of the federal government, or any subdivision thereof.
10. "Power emergency" means an electric transmission line and associated facilities that have been damaged or destroyed by natural or manmade causes resulting in a loss of power supply to consumers of the power.
11. "Repower" means construction activities to completely or partially dismantle and replace turbine equipment at an existing wind energy conversion facility site that result in an increase of the facility's generation output potential or turbine height. The term does not include routine turbine maintenance or routine replacement of malfunctioning turbines or turbine components.
12. "Route" means the location of an electric transmission facility within a designated corridor.
- ~~12-13.~~ "Site" means the location of an electric energy conversion facility.
- ~~13-14.~~ "Utility" means a person engaged in and controlling the electric generation, the transmission of electric energy, or the transmission of water from or to any electric energy conversion facility.

**SECTION 2.** A new subsection to section 49-22-07 of the North Dakota Century Code is created and enacted as follows:

A wind energy conversion facility that has not been issued a certificate of site compatibility and exceeds five megawatts of electricity may not repower the wind energy conversion facility without first having obtained a certificate of site compatibility. A variance may be granted for impacts to exclusion and avoidance areas resulting from the repowering of existing infrastructure upon a showing of good cause. A requested variance must comply with local land use, zoning, building rules, regulations, and ordinances.

**SECTION 3. AMENDMENT.** Section 49-22-16.4 of the North Dakota Century Code is amended and reenacted as follows:

**49-22-16.4. Light-mitigating technology system - Rules.**

1. The commission shall adopt rules by January 1, 2019, relating to the implementation of light-mitigating technology systems on wind energy conversion facilities. The rules must be consistent with the federal aviation administration regulations [14 CFR 1.1 et seq.] and must include service and maintenance requirements, safety standards, and lighting system requirements.
2. By December 31, 2019, every wind energy conversion facility for which the commission issued a certificate of site compatibility after June 5, 2016, must be equipped with a functioning light-mitigating technology system that complies with rules adopted by the commission. After public hearing, the commission may grant a waiver or an extension of time based on technical or economic feasibility considerations.
3. By December 31, 2021, every wind energy conversion facility for which the commission issued a certificate of site compatibility before June 5, 2016, must

be equipped with a functioning light-mitigating technology system that complies with the rules adopted by the commission. After public hearing, the commission may grant a waiver or an extension of time based on technical or economic feasibility considerations.

4. Any costs associated with the implementation, operation, and maintenance of light-mitigating technology systems are the sole responsibility of the wind energy conversion facility owner.

Approved March 17, 2021

Filed March 18, 2021

## CHAPTER 347

### HOUSE BILL NO. 1096

(Energy and Natural Resources Committee)  
(At the request of the Public Service Commission)

AN ACT to create and enact sections 49-22-25, 49-22-26, 49-22.1-23, and 49-22.1-24 of the North Dakota Century Code, relating to energy conversion and transmission siting and facilities; to amend and reenact subsection 3 of section 49-22-03, section 49-22-07.2, subsections 1 and 4 of section 49-22-13, subsection 1 of section 49-22-22, subsections 3 and 7 of section 49-22.1-01, section 49-22.1-05, subsections 1 and 4 of section 49-22.1-10, and subsection 1 of section 49-22.1-21 of the North Dakota Century Code, relating to energy conversion and transmission siting and facilities; and to repeal section 49-22.1-22 of the North Dakota Century Code, relating to removal of electrical standards requirement from gas and liquid energy transmission facilities.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>210</sup> **SECTION 1. AMENDMENT.** Subsection 3 of section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

3. "Construction" includes a clearing of land, excavation, or other action affecting the environment of the site after April 9, 1975, but does not include activities:
  - a. Conducted wholly within the geographic location for which a utility has previously obtained a certificate or permit under this chapter, or on which a facility was constructed before April 9, 1975, if:
    - (1) The activities are for the construction of the same type of facility as the existing type of facility as identified in a subdivision of subsections 5 or ~~426~~ of this section and the activities are:
      - (a) Within the geographic boundaries of a previously issued certificate or permit;
      - (b) For an electric energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
      - (c) For an electric transmission facility constructed before April 9, 1975, within a width of three hundred fifty feet [106.68 meters] on either side of the centerline;
    - (2) Except as provided in subdivision b, the activities do not affect any known exclusion or avoidance area;
    - (3) The activities are for the construction:

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<sup>210</sup> Section 49-22-03 was also amended by section 1 of House Bill No. 1095, chapter 346.

- (a) Of a new electric energy conversion facility;
  - (b) Of a new electric transmission facility;
  - (c) To improve the existing electric energy conversion facility or electric transmission facility; or
  - (d) To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
- (4) Before conducting any activities, the utility certifies in writing to the commission that:
- (a) The activities will not affect a known exclusion or avoidance area;
  - (b) The activities are for the construction:
    - [1] Of a new electric energy conversion facility;
    - [2] Of a new electric transmission facility;
    - [3] To improve the existing electric energy conversion or electric transmission facility; or
    - [4] To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
  - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility.
- b. Otherwise qualifying for exclusion under subdivision a, except that the activities are expected to affect a known avoidance area and the utility before conducting any activities:
- (1) Certifies in writing to the commission that:
- (a) The activities will not affect a known exclusion area;
  - (b) The activities are for the construction:
    - [1] Of a new electric energy conversion facility;
    - [2] Of a new electric transmission facility;
    - [3] To improve the existing electric energy conversion facility or electric transmission facility; or
    - [4] To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
  - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility;

- (2) Notifies the commission in writing that the activities are expected to impact an avoidance area and provides information on the specific avoidance area expected to be impacted and the reasons why impact cannot be avoided; and
- (3) Receives the commission's written approval for the impact to the avoidance area, based on a determination that there is no reasonable alternative to the expected impact. If the commission does not approve impacting the avoidance area, the utility must obtain siting authority under this chapter for the affected portion of the site or route. If the commission fails to act on the notification required by this subdivision within thirty days of the utility's filing the notification, the impact to the avoidance area is deemed approved.

c. Incident to preliminary engineering or environmental studies.

**SECTION 2. AMENDMENT.** Section 49-22-07.2 of the North Dakota Century Code is amended and reenacted as follows:

**49-22-07.2. Waiver of procedures and time schedules.**

Any utility which proposes to construct an electric energy conversion facility or an electric transmission facility within the state may make an application to the commission for a waiver of any of the procedures or time schedules set forth in this chapter or in the rules adopted pursuant to this chapter. The commission, ~~after hearing and~~ upon a finding that the proposed facility is of such length, design, location, or purpose that it will produce minimal adverse effects, or, ~~after hearing and~~ upon a finding that a demonstrable emergency exists ~~which requires immediate construction and that adherence to the procedures and time schedules would jeopardize the utility's system,~~ may issue an order waiving specified procedures and time schedules required by this chapter or by the rules adopted pursuant to this chapter, including, but not limited to, applications, notices, and hearings, and may forthwith issue a certificate of site compatibility, a certificate of corridor compatibility, or a route permit, with such conditions as the commission may require.

**SECTION 3. AMENDMENT.** Subsections 1 and 4 of section 49-22-13 of the North Dakota Century Code are amended and reenacted as follows:

1. The commission shall hold a public hearing in each county in which any portion of a site, corridor, or route is proposed to be located in an application for a certificate or a permit. If the commission determines there is an emergency that would prevent an in-person hearing in the county in which any portion of a site, corridor, or route is proposed, a remote public hearing may be held. At the public hearing, any person may present testimony or evidence relating to the information provided in the application, the criteria developed pursuant to section 49-22-05.1, and the factors to be considered pursuant to section 49-22-09. If the commission determines there are no adequate facilities to conduct a public hearing within the county in which any portion of a site, corridor, or route is proposed to be located in, the public hearing must be held in the nearest adequate location. When more than one county is involved, the commission may hold a consolidated hearing in one or more of the affected counties. A hearing for any county shall not be consolidated if five or more affected landowners in such county file a petition with the commission within ten days of the publication of the notice of hearing.

4. Notice of a public hearing shall be given by the commission by service on such persons and agencies that the commission may deem appropriate and twice by publication, once at least twenty days prior to such hearing and a second time within twenty days prior to such hearing. Notice of a public hearing and notice of opportunity for a public hearing on an application for a certificate, a permit, a transfer or amendment of a certificate or permit, or a waiver shall be given at the expense of the applicant. In an emergency the commission, in its discretion, may notice a hearing upon less than twenty days.

<sup>211</sup> **SECTION 4. AMENDMENT.** Subsection 1 of section 49-22-22 of the North Dakota Century Code is amended and reenacted as follows:

1. Every applicant under this chapter shall pay to the commission an application fee:
  - a. An applicant for a certificate of site compatibility shall pay an amount equal to five hundred dollars for each one million dollars of investment in the facility.
  - b. An applicant for a certificate of corridor compatibility shall pay an amount equal to five thousand dollars for each one million dollars of investment in the facility.
  - c. An applicant for a waiver shall pay the amount which would be required for an application for a certificate of site or corridor compatibility for the proposed facility. If a waiver is not granted for a proposed facility, such application fee paid shall be allowed as a credit against fees payable under this section in connection with an application under this chapter for a certificate or permit for the proposed facility.
  - d. An applicant requesting an amendment to a certificate or permit or for a transfer of a certificate or permit shall pay an amount to be determined by the commission to cover anticipated expenses of processing the application.
  - e. An applicant certifying to the commission under subsection 3 of section 49-22-03 shall pay an amount to be determined by the commission to cover anticipated expenses of processing the application.
  - f. The application fee under subdivision a, b, or c may not be less than ten thousand dollars nor more than one hundred thousand dollars.
  - g. If an application fee is less than twenty-five thousand dollars, an applicant may agree to pay additional fees that are reasonably necessary for completion of the site, corridor, or route evaluation and designation process.

**SECTION 5.** Section 49-22-25 of the North Dakota Century Code is created and enacted as follows:

**49-22-25. Approval for temporary operation or variance.**

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<sup>211</sup> Section 49-22-22 was also amended by section 7 of House Bill No. 1008, chapter 8.

1. The commission may approve temporary operation of facilities or a temporary variance from approved construction, operation, or maintenance of facilities upon a showing of good cause and receipt of a utility certification that the activities will have no adverse impacts upon the welfare of the citizens of this state or the environment.
2. The commission may issue a temporary approval or variance without the necessity of notice, publication, or public hearing with any additional terms, conditions, or modifications deemed necessary to minimize impacts.

**SECTION 6.** Section 49-22-26 of the North Dakota Century Code is created and enacted as follows:

**49-22-26. Protection of cultural or historic site data.**

The commission may limit access to, and release of, information that contains data that specifically identifies the location of cultural, archaeological, historical, or paleontological sites.

**SECTION 7. AMENDMENT.** Subsections 3 and 7 of section 49-22.1-01 of the North Dakota Century Code are amended and reenacted as follows:

3. "Construction" includes a clearing of land, excavation, or other action affecting the environment of the site after April 9, 1975, but does not include activities:
  - a. Conducted wholly within the geographic location for which a utility has previously obtained a certificate or permit under this chapter, or on which a facility was constructed before April 9, 1975, if:
    - (1) The activities are for the construction of the same type of facility as the existing type of facility as identified in subsection 56 or 427 and the activities are:
      - (a) Within the geographic boundaries of a previously issued certificate or permit;
      - (b) For a gas or liquid energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
      - (c) For a gas or liquid transmission facility constructed before April 9, 1975, within a width of three hundred fifty feet [106.68 meters] on either side of the centerline;
    - (2) Except as provided in subdivision b, the activities do not affect any known exclusion or avoidance area;
    - (3) The activities are for the construction:
      - (a) Of a new gas or liquid energy conversion facility;
      - (b) Of a new gas or liquid transmission facility;
      - (c) To improve the existing gas or liquid energy conversion facility, or gas or liquid, transmission facility; or

- (d) To increase or decrease the capacity of the existing gas or liquid energy conversion facility or gas or liquid transmission facility; and
- (4) Before conducting any activities, the utility certifies in writing to the commission that:
  - (a) The activities will not affect a known exclusion or avoidance area;
  - (b) The activities are for the construction:
    - [1] Of a new gas or liquid energy conversion facility;
    - [2] Of a new gas or liquid transmission facility;
    - [3] To improve the existing gas or liquid energy conversion or gas or liquid transmission facility; or
    - [4] To increase or decrease the capacity of the existing gas or liquid energy conversion facility or gas or liquid transmission facility; and
  - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility.
- b. Otherwise qualifying for exclusion under subdivision a, except that the activities are expected to affect a known avoidance area and the utility before conducting any activities:
  - (1) Certifies in writing to the commission:
    - (a) The activities will not affect any known exclusion area;
    - (b) The activities are for the construction:
      - [1] Of a new gas or liquid energy conversion facility;
      - [2] Of a new gas or liquid transmission facility;
      - [3] To improve the existing gas or liquid energy conversion facility or gas or liquid facility; or
      - [4] To increase or decrease the capacity of the existing gas or liquid energy conversion facility or gas or liquid transmission facility; and
    - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility;
  - (2) Notifies the commission in writing that the activities are expected to impact an avoidance area and provides information on the specific avoidance area expected to be impacted and the reasons why impact cannot be avoided; and

- (3) Receives the commission's written approval for the impact to the avoidance area, based on a determination that there is no reasonable alternative to the expected impact. If the commission does not approve impacting the avoidance area, the utility must obtain siting authority under this chapter for the affected portion of the site or route. If the commission fails to act on the notification required by this subdivision within thirty days of the utility's filing the notification, the impact to the avoidance area is deemed approved.
- c. Incident to preliminary engineering or environmental studies.
7. "Gas or liquid transmission facility" means any of the following:
- a. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or carbon dioxide. This subdivision does not apply to:
- (1) An oil or gas pipeline gathering system;
- (2) A natural gas distribution system;
- (3) Carbon dioxide storage facility underground equipment, including a flow line, subject to chapter 38-22;
- (4) A pipeline with an outside diameter of four and one-half inches [11.43 centimeters] or less which will not be trenched and will be plowed in with a power mechanism having a vertical knife or horizontally directionally drilled, and its associated facilities; or
- ~~(3)~~(5) A pipeline that is less than one mile [1.61 kilometers] long. For purposes of this chapter, a gathering system includes the pipelines and associated facilities used to collect oil from the lease site to the first pipeline storage site where pressure is increased for further transport, or pipelines and associated facilities used to collect gas from the well to the gas processing facility at which end-use consumer-quality gas is produced, with or without the addition of odorant.
- b. A liquid transmission line and associated facilities designed for or capable of transporting water from or to an energy conversion facility.

**SECTION 8. AMENDMENT.** Section 49-22.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**49-22.1-05. Waiver of procedures and time schedules.**

Any utility that proposes to construct a gas or liquid energy conversion facility or a gas or liquid transmission facility within the state may make an application to the commission for a waiver of any of the procedures or time schedules set forth in this chapter or in the rules adopted pursuant to this chapter. The commission, ~~after hearing and~~ upon a finding that the proposed facility is of a length, design, location, or purpose that it will produce minimal adverse effects, or, ~~after hearing and~~ upon a finding that a demonstrable emergency exists which requires immediate construction and that adherence to the procedures and time schedules would jeopardize the utility's system, may issue an order waiving specified procedures and time schedules required by this chapter or by the rules adopted pursuant to this chapter, including applications, notices, and hearings, and may forthwith issue a certificate of site

compatibility, a certificate of corridor compatibility, or a route permit, with such conditions as the commission may require.

**SECTION 9. AMENDMENT.** Subsections 1 and 4 of section 49-22.1-10 of the North Dakota Century Code are amended and reenacted as follows:

1. The commission shall hold a public hearing in each county in which any portion of a site, corridor, or route is proposed to be located in an application for a certificate or a permit. If the commission determines there is an emergency that would prevent an in-person hearing in the county in which any portion of a site, corridor, or route is proposed, a remote public hearing may be held. At the public hearing, any person may present testimony or evidence relating to the information provided in the application, the criteria developed pursuant to section 49-22.1-03, and the factors to be considered pursuant to section 49-22.1-09. If the commission determines there are no adequate facilities to conduct a public hearing within the county in which any portion of a site, corridor, or route is proposed to be located in, the public hearing must be held in the nearest adequate location. When more than one county is involved, the commission may hold a consolidated hearing in one or more of the affected counties. A hearing for any county may not be consolidated if five or more affected landowners in that county file a petition with the commission within ten days of the publication of the notice of hearing.
4. Notice of a public hearing must be given by the commission by service on those persons the commission deems appropriate and twice by publication, once at least twenty days before the hearing and a second time within twenty days before the hearing. Notice of a public hearing and notice of opportunity for a public hearing on an application for a certificate, a permit, a transfer or amendment of a certificate or permit, or a waiver must be given at the expense of the applicant. In an emergency the commission may notice a hearing upon less than twenty days.

<sup>212</sup> **SECTION 10. AMENDMENT.** Subsection 1 of section 49-22.1-21 of the North Dakota Century Code is amended and reenacted as follows:

1. Every applicant under this chapter shall pay to the commission an application fee:
  - a. An applicant for a certificate of site compatibility shall pay an amount equal to five hundred dollars for each one million dollars of investment in the facility.
  - b. An applicant for a certificate of corridor compatibility shall pay an amount equal to five thousand dollars for each one million dollars of investment in the facility.
  - c. An applicant for a waiver shall pay the amount that would be required for an application for a certificate of site or corridor compatibility for the proposed facility. If a waiver is not granted for a proposed facility, the application fee paid must be allowed as a credit against fees payable under this section in connection with an application under this chapter for a certificate or permit for the proposed facility.

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<sup>212</sup> Section 49-22.1-21 was also amended by section 8 of House Bill No. 1008, chapter 8.

- d. An applicant for a transfer of a certificate or permit shall pay an amount to be determined by the commission to cover anticipated expenses of processing the application.
- e. An applicant requesting an amendment to a certificate or permit, or certifying to the commission under subsection 3 of section 49-22.1-01 or obtaining siting authority under subdivision b of subsection 2 or subdivision c of subsection 4 of section 49-22.1-15, shall pay an amount to be determined by the commission to cover anticipated expenses of processing the application.
- f. The application fee under subdivision a, b, or c may not be less than ten thousand dollars nor more than one hundred thousand dollars.
- g. If an application fee is less than twenty-five thousand dollars, an applicant may agree to pay additional fees that are reasonably necessary for completion of the site, corridor, or route evaluation and designation process.

**SECTION 11.** Section 49-22.1-23 of the North Dakota Century Code is created and enacted as follows:

**49-22.1-23. Approval for temporary operation or variance.**

1. The commission may approve temporary operation of facilities or a temporary variance from approved construction, operation, or maintenance of facilities upon a showing of good cause and receipt of a utility certification that the activities will have no adverse impacts upon the welfare of the citizens of this state or the environment.
2. The commission may issue a temporary approval or variance without the necessity of notice, publication, or public hearing with any additional terms, conditions, or modifications deemed necessary to minimize impacts.

**SECTION 12.** Section 49-22.1-24 of the North Dakota Century Code is created and enacted as follows:

**49-22.1-24. Protection of cultural or historic site data.**

The commission may limit access to, and release of, information that contains data that specifically identifies the location of cultural, archaeological, historical, or paleontological sites.

**SECTION 13. REPEAL.** Section 49-22.1-22 of the North Dakota Century Code is repealed.

Approved April 21, 2021

Filed April 22, 2021

## CHAPTER 348

### HOUSE BILL NO. 1455

(Representatives Nehring, Toman)  
(Senator Bell)

AN ACT to amend and reenact section 49-22-04 of the North Dakota Century Code, relating to ten-year plans; and to provide for a legislative management study.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 49-22-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **49-22-04. Ten-year plans - Contents.**

1. Each utility that owns or operates, or plans within the next ten years to own, operate, or start construction on any facility shall develop a ten-year plan as specified in this section and submit the plan to the commission. Each utility shall file an updated plan on or before July first of each even-numbered year after the year of its initial submission. The ten-year plan may be appropriate portions of a single regional plan or may be jointly prepared and submitted by two or more utilities and must contain the following information:
  1. a. A description of the general location, size, and type of all facilities to be owned or operated by the utility during the ensuing ten years, as well as those facilities to be removed from service during the ten-year period.
  2. b. An identification of the location of the tentative preferred site for all electric energy conversion facilities and the tentative location of all electric transmission facilities on which construction is intended to be commenced within the ensuing five years and such other information as may be required by the commission. The site and corridor identification shall be made in compliance with the criteria published by the commission pursuant to section 49-22-05.1.
  3. c. A description of the efforts by the utility to coordinate the plan with other utilities so as to provide a coordinated regional plan for meeting the utility needs of the region.
  4. d. A description of the efforts to involve environmental protection and land-use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process.
  5. e. A statement of the projected demand for the service rendered by the utility for the ensuing ten years and the underlying assumptions for the projection, with that information being as geographically specific as possible, and a description of the manner and extent to which the utility will meet the projected demands.

- 6- f. Any other relevant information as may be requested by the commission. Upon receipt of the ten-year plans the commission shall proceed to assess the impact of the development proposed within the state to ensure that energy conversion facilities and transmission facilities will be sited in an orderly manner compatible with environmental preservation and efficient use of resources.
2. If not previously disclosed in a ten-year plan filing pursuant to subdivision a of subsection 1, the utility owner or operator of an electric energy conversion facility shall notify the commission and the auditor of the county in which the facility is located if the owner or operator considers removing an electric energy conversion facility from service. Upon notice of the removal from service, the commission may request the owner or operator provide the commission with any applicable reliability study developed with a regional transmission organization in conjunction with the considered removal from service and may accept public comment in a format prescribed by the commission.

**SECTION 2. LEGISLATIVE MANAGEMENT STUDY - COAL CONVERSION FACILITIES.** During the 2021-22 interim, the legislative management shall consider studying the need, cost, effect, and appropriate process for bonding and ensuring reclamation of coal conversion facilities. The study must include an examination and assessment of the methods and amounts of financial assurance and schedules, the interaction of economics and the statutes, rules, and policies relating to the remaining useful life and early retirement of coal conversion facilities, the role of the public service commission in all electrical generation retirement, and the appropriate involvement of the public and local communities and political subdivisions in the retirement process. The study also must evaluate the effectiveness of government programs and incentives relating to energy production, reliability, and the state's role in that process. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-eighth legislative assembly.

Approved April 19, 2021

Filed April 20, 2021

## CHAPTER 349

### SENATE BILL NO. 2263

(Senators Kannianen, Schaible, Weber)  
(Representatives D. Anderson, Fegley, Jones)

AN ACT to amend and reenact section 49-22-08 of the North Dakota Century Code, relating to notice requirements for an application for a certificate of site or corridor compatibility; and to provide for application.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 49-22-08 of the North Dakota Century Code is amended and reenacted as follows:

#### **49-22-08. Application for a certificate - Notice of filing - Amendment - Designation of a site or corridor.**

1. An application for a certificate must be in such form as the commission may prescribe, containing the following information:
  - a. A description of the size and type of facility.
  - b. A summary of any studies which have been made of the environmental impact of the facility.
  - c. A statement explaining the need for the facility.
  - d. An identification of the location of the preferred site for any electric energy conversion facility.
  - e. An identification of the location of the preferred corridor for any electric transmission facility.
  - f. A description of the merits and detriments of any location identified and a comprehensive analysis with supporting data showing the reasons why the preferred location is best suited for the facility.
  - g. A description of mitigative measures that will be taken to minimize all foreseen adverse impacts resulting from the location, construction, and operation of the proposed facility.
  - h. An evaluation of the proposed site or corridor with regard to the applicable considerations set out in section 49-22-09 and the criteria established pursuant to section 49-22-05.1.
  - i. Such other information as the applicant may consider relevant or the commission may require.
2. After determining that the application is complete, the commission shall serve a notice of filing of the application on such persons and agencies that the commission may deem appropriate and shall publish a notice of filing of the

application in the official newspaper of each county in which any portion of the site or corridor is proposed to be located.

3. A copy of the application shall be furnished to any person or agency, upon request to the commission within thirty days of either service or publication of the notice of filing.
4. Within thirty days following service of the notice of filing of a complete application by the commission, the applicant shall provide a copy of the commission's notice of filing of the application by first-class mail to the owner of record of any land located within the requested site or corridor. For purposes of this subsection, the owner of record means the owner identified by the county treasurer to receive the real estate tax statement.
5. An application for an amendment of a certificate shall be in such form and contain such information as the commission shall prescribe.
- ~~5-6.~~ The commission may designate a site or corridor for a proposed facility following the study and hearings provided for in this chapter. Any designation shall be made in accordance with the evidence presented at the hearings, an evaluation of the information provided in the application, the criteria established pursuant to section 49-22-05.1, and the considerations set out in section 49-22-09 in a finding with reasons for the designation, and shall be made in a timely manner no later than six months after the filing of a completed application for a certificate of site compatibility or no later than three months after the filing of a completed application for a certificate of corridor compatibility. The time for designation of a site or corridor may be extended by the commission for just cause. The failure of the commission to act within the time limits provided in this section shall not operate to divest the commission of jurisdiction in any certification proceeding. The commission shall indicate the reasons for any refusal of designation. Upon designation of a site or corridor, the commission shall issue a certificate of site compatibility or a certificate of corridor compatibility with such terms, conditions, or modifications deemed necessary. The commission may not condition the issuance of a certificate or permit on the applicant providing a mitigation payment assessed or requested by another state agency or entity to offset a negative impact on wildlife habitat.

**SECTION 2. APPLICATION.** This Act applies to a siting application filed after August 31, 2021.

Approved April 12, 2021

Filed April 13, 2021

## CHAPTER 350

### HOUSE BILL NO. 1158

(Representatives Brandenburg, Headland, Howe, D. Johnson, Schreiber-Beck,  
Thomas, Weisz, Westlund)  
(Senators Luick, Wanzek)

AN ACT to amend and reenact subsection 2 of section 49-22-09.2 of the North Dakota Century Code, relating to the allocation of moneys paid to mitigate adverse environmental impacts.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 2 of section 49-22-09.2 of the North Dakota Century Code is amended and reenacted as follows:

2. The agriculture commissioner shall deposit ~~into the environmental impact mitigation fund~~ any moneys paid to mitigate the adverse direct environmental impacts of a proposed site, corridor, route, or facility as follows:
  - a. Fifty percent into the environmental impact mitigation fund; and
  - b. Fifty percent into the federal environmental law impact review fund.

Approved March 16, 2021

Filed March 16, 2021

## CHAPTER 351

### HOUSE BILL NO. 1059

(Energy and Natural Resources Committee)  
(At the request of the Public Service Commission)

AN ACT to amend and reenact subsection 1 of section 49-23-06 of the North Dakota Century Code, relating to requiring an excavator to call 911 upon damage to a facility that releases any flammable toxic or corrosive gas.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 1 of section 49-23-06 of the North Dakota Century Code is amended and reenacted as follows:

1. a. If any damage occurs to an underground facility or its protective covering, the excavator shall notify the operator as soon as reasonably possible. When the operator receives a damage notice, the operator shall dispatch, as soon as reasonably possible, personnel to the damage area to investigate. If the damage results in the escape of flammable, toxic, or corrosive gas or liquid, the excavator shall:
  - (1) Call 911 immediately; and
  - (2) Notify the pipeline operator immediately.
- b. If the damage endangers life, health, or property, the excavator responsible for the work shall take immediate action to protect the public and property and to minimize the hazard until arrival of the operator's personnel or until emergency responders have arrived and taken charge of the damaged area.
- ~~b.c.~~ An excavator shall delay backfilling in the immediate area of the damaged underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise. The repair of damage must be performed by the operator or by qualified personnel authorized by the operator.
- ~~e.d.~~ An excavator is guilty of a class A misdemeanor if the excavator damages an underground facility or its protective covering and knew or reasonably should have known the damage occurred and:
  - (1) The excavator does not notify the operator as soon as reasonably possible; or
  - (2) The excavator backfills in violation of subdivision ~~b.c.~~

Approved April 19, 2021

Filed April 20, 2021